Faculty Working Papers

COMPETITION POLICY IN OUR DEMOCRACY,--WHITHER?

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P. D. Converse Symposium Paper #4

College of Commerce and Business Administration
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It is an honor and privilege to be able to extend and reinterpret my position in Marketing and Public Policy[1] and in general. In Marketing and Public Policy, I depicted and interpreted the role of marketing in our market-type society in contrast to command-type societies directed by a central bureaucracy. This little volume published in 1966 was preceded by a number of special studies of various aspects of competitive functioning and by some overall reviews that need not be discussed here. I have been a close observer and researcher and participant in the drama of competition in this country and elsewhere in the world for a little more than half a century. I have had the opportunity of reporting upon my researches and experiences in diverse publications and forums including the American Marketing Association, the American Economic Association, the American Bar Association, and now for the third time,--the Paul D. Converse Symposium at the University of Illinois.[2]

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[1]E. T. Grether, Marketing and Public Policy (Englewood Cliffs, New Jersey, Prentice-Hall, Inc., 1966.

[2]The publications since 1966 include: "Marketing and Public Policy: A Contemporary View," Journal of Marketing, July 1974; "Competition Policy in the United States--Looking Ahead," California Management Review, Summer, 1974; "Efficiency in Antitrust Resource Allocation," Journal of Contemporary Business, Autumn, 1973; "Business Responsibility Toward the Market," California Management Review, Fall, 1969; "The Environment and Integrity of Marketing and Public Policy: An Overview," in Public Policy and Marketing Practices, ed. by Fred C. Allvine (1973) "Industrial Organization: Past History and Future Problems," American Economic Review, May 1970; "Impact of Government Upon the Market System," with R. J. Holloway, Journal of Marketing, April 1967; "Pricing Practices and Antitrust," Prices: Issues in Theory, Practice and Public Policy, ed. by A. Phillips and O. E. Williamson, 1967.

Included in earlier papers were the two prepared for University of Illinois Converse Symposia. The first paper[3], published 21 years ago, presented a broad, overall view of the regulation of competition. For the most part, the framework of this analysis still seems satisfactory, but I wish to amend my position in that paper in one important aspect in my discussion today.[4]

The second paper was concerned with enterprise and product differentiation and was incited by a paper by Professor Edward H. Chamberlin presented to the previous Converse Symposium, and by the high importance of trading stamps, give-aways and numerous other forms of gimmickry in American marketing at the time. I had the honor of introducing Professor Chamberlin to the participants in the symposium when he received the Converse Award, and of sharing a room with him at the palatial Allerton House. In a section to come, I shall refer to the current leading Federal Trade Commission test case in the area of product differentiation, brand promotion and advertising.

U.S.A.: THE FIRST 100 YEARS

It seems appropriate to put the appraisal today in the perspective of our national bicentennial celebration, particularly since Adam Smith's Wealth of Nations also appeared in 1776. The United States of America became the magnificent

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[3] "The Regulation of Competition: An Analysis of the Historical Development and Outlook for the Future," in the Role and Nature of Competition in our Marketing Economy, University of Illinois Bulletin, Vol. 51, No. 76 (June 1954), ed. by H. W. Huegy.

[4] See page 11.

case example of the economic consequences of the transition from a society based on feudal status to one based on contract. The "illth" that came along with the increasing "wealth" was held to be more than offset by benefits of the release from the tyranny of the yokes of custom and of the fixed patterns of social relationships. Decade by decade, over the years in this country as in Western Europe, governments have endeavored to remove or relieve the more deleterious consequences of unregulated competition while maintaining the basis in freedom of contract, choice and enterprise.

During the first 100 years to 1976, our portion of the North American continent was occupied in a tremendous demonstration of government facilitating individual initiative. The population tidal wave first rolled westward into the Midwest and great plains areas, then jumped to the West Coast during the Gold Rush and then rippled from both sides into the Rocky Mountain and northern plains areas. Some of this area had not even been incorporated into statehood by the end of the first century. Montana, with its huge land mass, for example, was admitted to the Union with its few inhabitants only in 1889. The speed and character of the post Civil War rush were greatly affected by two important pieces of federal legislation, both enacted in 1862; viz., the Homestead Law and the Land Grant Act. In the first, small-scale land ownership in family holdings and enterprises was underwritten; in the second, public education in support of agricultural, mechanical arts and other pursuits was subsidized. In retrospect, it is amazing how many crucial national policy moves were made during the Civil War period at the federal level.

Once the issue of national political unity was settled by the Civil War, economic unity was guaranteed through the railways, waterways, postal, telegraph and other means of transportation and communication. The complex of trading and of physical handling facilities which appeared at central transportation centers and the organizing wholesale middlemen operating out of these centers, were the media for integrating the economic system. We were still essentially a rural raw material producing economy and characteristically one of relatively small-scale enterprises. But the creation of the economic opportunities in our rich national and regional markets and of the integrating transportation, communication and trading facilities provided the basis for the extraordinarily rapid development of larger scale business enterprises and of combines.

The agrarian and populist movements of the 1870's and 1880's and into the next century, reflected the strains and conflicts of the emergence of these large-scale enterprises and combines with their impacts upon agriculture and the small towns. The Interstate Commerce Act of 1887 and the Sherman Act of 1890 at the federal level represent the two initial efforts to relieve the economic and political strains.

THE U.S.A. AT THE END OF THE SECOND 100 YEARS

The United States at the end of the second century is unbelievably different from that of 1876. The most obvious transformation has been that away from a dominantly agricultural economy and society to the world's greatest industrial nation. Agriculture is no longer the seed bed of population growth and of national values. Our population instead of being largely decentralized over great space is now highly concentrated in metropolitan areas with their inner city

centers and suburban rings. We are now much more literate with the average level of education extending into the first year of college. Even more important, the radio and television superimposed upon the means of communication at the end of the previous century sensitize all of us daily to the entire world scene. Probably the most significant social consequence of all has been the loss of the rural industries and areas as great instruments for individual therapy and social shock absorption. For decades, people with personal problems tended to disappear temporarily or permanently into the farms and ranches where they worked with their hands, with animals and in close relationship with natural processes. These outlets for the most part are no longer available among the small proportion of our population engaged in agricultural pursuits,--and when they are, machines powered by petroleum derivatives, here, too, have replaced hand work and animal energy. There are more horses now in our metropolitan areas than in the farms and ranches. Animals, as well as grain, forage and other crops, are raised and handled by factory-type methods. The haying and harvest crews so characteristic of yesteryear have been replaced by one man on an expensive piece of capital equipment. Agriculture is now highly capital intensive instead of labor intensive.

Nowadays our cities are teeming with youth often unemployed, who roam the streets instead of doing the chores of the farm or participating in family enterprises. It is no solution for small groups or communes to try to restore the good old days except as they are fortunate enough to have trust funds left to them by capitalistic parents or grandparents, allowing them the luxury of inefficient methods of production. Much more realistic might be a major decentralization of people and of non-farm industries into remaining great open

spaces so that the congestion in metropolitan areas might be relieved. It would be exceedingly fortunate if all who so desire could own or have access to at least a bit of land of their own. Or, as is still true, fortunately, for hundreds of thousands, if all who wish, could operate their own personal or family small businesses as independent entrepreneurs or practice their professions and arts as self-employed or independent contractors.

COMMON LAW ORIGIN OF OUR COMPETITION POLICY

Our national economic policy of competition in the United States bot institutionally and ideologically was transplanted from Western Europe, especially Great Britain. The tenets of our competition policy came down the channels of British Common Law. Its pattern and content emerged slowly, case by case, precedent by precedent, as judges adjudicated among private grievances. It came to us in terms of rules governing the restraints on trade and of unfair practices among competitors. It took its form and substance out of the grievances arising in the petty trade so characteristic of our first century, not those of modern great corporations and complex industrial society. Its tenets insinuated themselves into our legal procedures in the Colonies and in the States during the first century of our nationhood, and in federal law, beginning with the Sherman Act in 1890. The Sherman Act was not considered to be a radical statute since it basically incorporated the accepted common law tradition. The opportunities in our advancing frontier and the inherent individualism magnified both the acceptance and economic results of free enterprise and freedom of choice and trade among small competitors. The common law of restraint of trade and of unfair competition was almost made to order for this

setting. And only later was our national policy focused upon the protection or preservation of something called "competition" in an impersonal sense, instead of "competitors". The gradual shift towards the preservation of "competition" was paralleled by the development of the abstract formal body of economic analysis of pure and perfect competition. That is, there was a shift from a stress on competition or restraints of trade in personal rivalries to competition as an abstract, impersonal force.

SHOULD THE SHERMAN ACT BE SCRAPPED?

Obviously, the question must arise concerning the validity and applicability of our competition policy in its historical evolution as amended over the years by the other statutes, the orders of administrative tribunals, and especially, as interpreted in court decisions. I need not here review the statutes and administrative and court actions, except to note that the totality is so complex and often so confusing that only relatively few find it comprehensible.[5] And, if you are a litigant, either on the public or private side, you had better check the qualifications of your legal and economic counsel very carefully, since there are so few qualified generalists; instead there tend to be specialists by types of statute or tribunal, or by type of action and so on and so on. Is our body of laws governing competition which came to us down the common law channel, outmoded in the United States as of 1975 with its great corporations, rapidly moving technologies, and highly efficient, sensitive well nigh instantaneous data collection and information systems? Only those of us who grew up in rural and small town America can truly understand the startling differences as between

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[5]Cf. Mark S. Massel, Competition and Monopoly: Legal and Economic Issues (Washington, D.C.: The Brookings Institution, 1962).

yesteryear and today. It is safe to predict that at some time in the foreseeable future there will be a demand for the repeal of the Sherman Act as outdated and relatively irrelevant under present conditions. It might appear, at least superficially, that giant and large and medium sized corporations, national and multinational, would present problems that could not be adjudicated within the bounds of common law precedents and conceptualizations derived out of the grievances of petty trade and in terms of statutes and cases reflecting this origin.

PIECEMEAL REVISION, NOT SCRAPPING, PREFERABLE

But our present policies have enormous undergirding in the law of contracts and agency in relation to the other related bodies of law and in public support. Furthermore, they do allow for flexible adaptation and adjustment. Insofar as revisions are desirable, it would seem preferable for them to be made to our present body of law and regulation and not out of the wholesale junking of the heritage of our past. There are enormous variations in internal organization, managerial and decision making processes and procedures, and production processes and in goals and objectives as between and among even the larger and giant enterprises. We must be careful to allow for the appropriate expression of the myriads of variations instead of trying to squeeze this enormous diversity into a number of artificial homogeneous forms.

The slowly evolving common law approach had the inherent advantage of flexible adjustments, case by case. Unfortunately, our legislators have tended too readily and frequently to rush in pell mell with special rules and regulations or jurisprudence to meet the demands of organized groups of constituents. Hence,

competition in the traditional sense has been subverted and even sabotaged in federal and state laws. Additional confusion has arisen out of the endeavors in so-called hard core antitrust to force the analysis of competition into the traditional partial equilibrium categories of economic analysis. The identification of the "line of commerce" and of the so-called "relevant market" have tended to become encumbered by a certain formalism and ritualism sometimes very difficult to relate realistically to the conditions of some modern enterprises and markets. The increasing number of private treble damage actions have tended to accentuate this ritualism in the calculation of the amounts of damages. Much of the nature and meaning of competition is lost when the analysis is confined too narrowly or forced into the bounds of artificial categories and definitions. Competition can be and should be adaptable to national, regional and local variations in supply and demand factors and to organizational differences.

A year ago while traveling about Japan, I said to myself, "The Japanese ought to bow down each day before the goddess of market coordination,--imagine trying to direct all of these labyrinthal activities through a central bureaucracy."

Above all, market competition guarantees the availability of choices among genuine independent alternatives at all, or most levels of economic activity, but especially at the consumer-buyer level. If such opportunities for choice disappear in local markets, then they will be relatively meaningless in the voting precincts. Just as the mores of common law competition insinuated themselves into our economic way of life in this country, so could those of non-market forms of economic organization almost imperceptibly replace market competition, and in fact may be doing so. Although market competition is still the preferred way of economic

organization in this country it no longer is considered to be the only way.[6] And many are looking hopefully to the expansion of non-market forms of organization.

THE WIDESPREAD DISTRUST OF GREAT BUREAUCRACIES

It is trite nowadays to state that distrust with respect to all large bureaucracies is widespread, in fact, rampant in the United States,--whether federal, state, private, organized labor, educational--or what! The recent and current ecological, conservationist, consumeristic and so on expressions are not superficial passing phenomena. One of the most basic social issues of our times is the maintenance of access to nature's bounty in land, water and air together with opportunities for the exercise of creative talents in business, professional, artistic or other pursuits.

Undoubtedly, there will continue to be a sharp cleavage as between the forces of the right or so-called conservatives, and left, so-called liberals and progressives, with pockets of sharper division outside these groups. The forces on the "right" will continue to call upon the representatives of the great private bureaucracies to whip the public bureaucracies "into better shape". The forces on the left will tend to overemphasize the role and contribution of the government and will tend to call upon government at all levels to whip the private bureaucracies into better shape. Standing outside will be the critics of both bureaucracies who would like to whip both the public and private bureaucracies into better shape in accordance with their particular political and social ideologies and objectives.

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[6] Cf. Corwin D. Edwards, "The Future of Competition Policy: A World View," California Management Review, Summer 1974, Vol. XVI, No. 4, pp. 112-126.

THE SHIFT TO MORE POSITIVE REGULATION

And this now brings me to the shift in my own position as stated in my first paper before an Illinois symposium[7] and elsewhere. It has been my consistent view that it should be possible to maintain and/or restore a sufficiently acceptable level of effective market competition in general and in particular situations, that would be preferable usually to alternatives, especially to non-market alternatives. I still hold this view, with an exception for the solution of some conservationist-ecological problems, which will require some expansion of governmental programs and regulation.

In my earlier view, I contended that the tests of acceptable competition should not involve evidences of economic and social performance except as these were essential to demonstrate that the enterprise was in free or acceptably active competition under existing laws. Enforcement should be directed at maintaining, preserving and restoring competition instead of requiring specific affirmative actions and evidences of economic and social performance. In other words, the maintenance of competition would be largely in terms of "Thou shalt nots" instead of the "Thou shalts". It is much simpler and clearer to enforce "Thou shalt not steal" than "Honor thy father and thy mother".

It was my view that American business should and would prefer, if necessary, to accept structural or other changes essential to maintaining acceptably active competition instead of enforcement in terms of the full tests of economic and

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[7] See above, page 2.

social performance. For one thing, our courts are ill-equipped to handle cases involving such voluminous and complex materials. Consequently, there would be inordinate delays or even a breakdown of legal procedures. For another, such actions could and would undoubtedly set the stage for the detailed regulation of business, especially of large diversified corporations, by government. The result could and most likely would be to transfer a larger proportion of business enterprises into public-utility and quasi-public utility status[8] with highly uncertain results in terms of their own interests and those of the public welfare.

But the record in recent years, especially in court cases, and in the policies of some of our great corporate entities under advice of counsel, makes it necessary now to yield on this position. The facts of life in the enforcement of antitrust are that corporate executives increasingly are being deposed and are appearing in courts to explain business decisions and practices. Inevitably, performance results are brought into evidence to interpret and defend the decisions and practices. Apparently in many instances top management and counsel prefer to present evidences of "social responsibility" and social performance to those of effective competition. Consequently, as expected, legal actions are becoming much more complex and require an entire litany of pretrial hearings, stipulations, pretrial briefs, trial briefs, reply briefs, mammoth collections of documents, hundreds of exhibits, and so on, including even the employment of experts by the court to protect the health and sanity of the judges and the sanctity of the final outcome. Possibly, we will have to establish special courts with

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[8]See the proposals of Gardiner C. Means in Pricing Power and the Public Interest (New York: Harper & Brothers, 1962) for a new category of "collective enterprises".

expertise to handle these cases as proposed by Kaysen and Turner.[9] In any event, it is little wonder that cases are subject to delays and are settled without going to full trial; if, for no other reason, than to stop the enormous expenses of litigation, let alone, the even larger risks of treble damage actions following an unfavorable verdict.

LEARNING PROCESSES OF ADVERSARY PROCEDURES

But it appears under present conditions and those of the foreseeable future, we shall continue with these very important and costly learning processes through adversary procedures. These procedures could be most helpful in the important areas of oligopoly and diversification and conglomeration. The interpretation of oligopolistic behavior with interdependence recognized is most difficult for courts especially in cases of alleged price and other agreements. And there is no simple or single solution because even so-called oligopolistic industry and market structures can be exceedingly complex and diverse. Hence, it can be exceedingly laborious to prepare the record for the defense or for the discovery requests. This is particularly true of price data broken down by product and brand variations and by vertical and geographical sub-market segments. Finally, the record must be interpreted and explained or if you wish, rationalized by relating the course and pattern of prices, say, to the basic economic conditions and trends and to competition,--in the setting of the market action, or market structures. And the data must be collected from internal records, manipulated and interpreted by product lines and brands, and by geographical sub-markets. Almost never can census or other published data be definitive or even used,--which may tell us something about the significance of the studies based on such published data. In the presence of numerous grades and quality levels and of brand

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[9] Carl Kaysen and D. F. Turner, Antitrust Policy: An Economic and Legal Analysis (Cambridge: Harvard, 1959), p. 254.

differentiation, it may be necessary for all parties to agree upon a given grade or brand or some other sampling procedure as the basis for analysis.

In many instances the internal records will not have been kept in a manner appropriate to the questions at issue. Consequently, special after the fact runs will have to be made, or reconstructed. In all instances and situations, in the background are the executives, top level or production and market level, responsible for the original decisions and practices. Many of these executives, perhaps typically so, have never envisaged the type of situation in which their actions must be explained under oath before a court. Hence, they are literally in the hands of their legal counsel.

Inevitably, therefore, even though the issues are largely managerial and economic, the lawyer occupies the strategic point in the legal action. Much, perhaps everything, will depend upon his legal and economic insights and experience and judgment in the perspective of the precedents of this type of case. Something, too, will depend upon the wisdom and expertise of economic counsel. But the lawyer is in charge and occupies the critical focal point as between the management and the governmental agency and the courtroom. The nature and quality of the outcome in adversary learning procedures is mightily dependent upon the wisdom, advice and guidance of the legal counsel and of the judges hearing the pleadings.

THE GOOD AND BAD NEWS

If the present state-of-affairs continues,--and there is nothing in the immediate outlook to suggest to the contrary, business enterprises, especially large, complex corporations, must include the possibility of explaining and justifying basic decisions before administrative tribunals and courts as a regular and continuing part of their planning and operating procedures. This could have a sobering, salutary impact upon business management and their legal counsel which, hopefully, would be beneficial. This may be the good news.

The bad news might be that federal and state regulatory agencies enforcing competition policy may be expected to provide guidelines and other criteria for business management either in terms of the traditional negatives or the "thou shalt nots," or through specific affirmative requirements. Inevitably, there would have to be closer, nonadversary working relations between business and government. Most likely, almost imperceptibly, large corporations would be moving into quasi-public utility status,--and even more so, ultimately, into the Galbraithian complex of public-private enterprise in which market mechanisms would have only residual regulative roles.

There seems to be a rising crescendo in favor of closer, nonadversary working relations between government and business in this country, but not in the setting just depicted. Often the practices and experience in Japan are cited in support. But one must be very careful about generalizing about competition policies across national boundaries. There are always marked differences in historical evolution, legal systems, resource patterns and uses, national characteristics and traits, etc., that affect the nature of an acceptable national policy. The differences as between the United States and Japan are marked indeed. The mix of competition and cooperation appropriate to Japan is not at all necessarily the pattern for us, and vice versa.

But what should be the nature of the cooperative or adversary relations in this country? Certainly the drift in this country suggests more effective cooperation between business and government beyond the traditional facilitating aids. For years some business leaders have held the French model of indicative planning as between Big Government and Big Business in high esteem. But here, too, there are marked differences as between France and the U.S.A.[9]

We need neither a Japanese nor a French or other approach borrowed from abroad,--not even one from Saudi-Arabia,--but our own American one appropriate to our own history, laws, and especially to the tenets of our Democracy as applied to our modern, restless urbanized and industrialized society. Given time, and in the absence of great crises, our approach should arise out of and take its form and substance from the adjustments and precedents arising out of strategic court cases and not out of wholesale endeavors by new legislation. In my view the present IBM case and the F.T.C. action in the Ready To Eat (RTE) or breakfast cereals case are of this strategic character.[10] The ITT case and others on the way up in 1969 also were of this character; hence, the ITT settlements without full trial slowed down the judicial interpretation of the 1950 Merger Law.[11] I hope that the current cases may go through full trial.

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[9] Cf. J. H. McArthur and Bruce R. Scott, Industrial Planning in France (Boston, Graduate School of Business Administration, Harvard, 1969).

[10] United States of America v. International Business Machines Corporation, Southern District of New York; in re Kellogg Company, et al. (January 15, 1972).

[11] For details, see "Efficiency in Antitrust Resource Allocation," footnote 2 above, and citations therein.

The outcome could be most strategic in bringing our law of competition into the modern "Great Society" in contrast with that of Adam Smith, who, it is worth noting, coined this phrase as well as "the invisible hand," so greatly overemphasized by the commentaries over the years. The IBM case and attendant private actions are tests not only of the law of competition in general but more specifically in relation to the developments in the highly important areas of data and information processing and the complex of industries and services that may well play the same roles in the decades ahead in our economy and society as the automobile in the half century behind us.

In the meantime the very recent AT&T case broadens the basis of the action to telecommunications industries and services in general and to the role and consequences of the public utility and quasi-public utility status and of the interrelations among giants.

The RTE cereals case should help establish the tenets of law and regulation and of practices in the important areas of differentiated oligopoly and product and brand development and brand promotion and advertising. It is well to remember that trademarking and brand promotion are to some extent mandatory under our per se rules against agreements and cartels. Enterprises are forced to go it alone instead of joining the wolf pack. Hence, the RTE case should help establish the rules for product development and brand promotion and advertising so characteristic of American marketing.

In these and other cases, too, we will continue the learning processes with respect to the reasonable distinctions and boundaries as between prohibited overt agreement and acceptable tacit behavior or the conscious parallelism of competition between the few with high or substantial recognition of interdependence, without overt agreement. It is of utmost importance for the precedents to emerge in this great area.

It is common, perhaps general, for American corporations to enunciate to all employees the shalt nots essential for compliance with antitrust laws. It should be possible also with some degree of assurance to enunciate the framework of a positive pro-competition policy as suggested by the distinguished members of the Westinghouse Board of Advice following the electrical cases, viz.:

> "...the corporation's problem in relation to the antitrust laws should not be regarded as solely, or even, primarily, the negative task of issuing and policing strict instructions against overt collusion... More broadly, the Corporation's business success in the future, will depend to a considerable degree on the adoption by the Corporation of policies of vigorous (and even aggressive) flexible, competitive initiative appropriate to the nature of the electrical industry and to the structure of the many product markets in which the Corporation sells..."[12] (italics added).

THE LARGE CORPORATION AND MARKET STRUCTURE ANALYSIS

This advice raises two broad sets of issues in terms of the internal organization and policies of enterprises. First, is the extent to which a large established corporation can successfully pursue a "vigorous and even aggressive" set of policies and practices in all its markets under our laws affecting competition, especially in the face of the increasing number of private actions. Second, and

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[12] A Report From the Board of Advice to Westinghouse Electric Corporation, 1962, p. 10.

closely related, is the adjustment to and rationalization of such competitive policies and initiatives to the nature of the industry and the structure of the many product markets in which firms operate.

The key to the future in terms of the maintenance of a viable competition policy may well be in these two issues and especially in the second. Let us recall, that competition policy in the common law tradition was highly individual,--case by case, and not conceived in terms of an abstract, impersonal force. Competition appropriate to the nature of an industry and the structure of product markets can and should reflect the special factors, circumstances, organization and supply and demand relations of each market down to the lowest definable geographical sub-market. The worst thing that could possibly happen to our national competition policy would be to try to squeeze it into a single or simple national mold or pattern. From this standpoint the formal economics of pure and perfect competition has done an enormous disservice to a rational and realistic competition policy. Let me repeat,--competition in being is and must be highly variable,--else it is not worth preserving!

This means merely and simply that the expressions and manifestations of competition must be and should be appraised not in terms of the hypothetical standards of models of formal, impersonal competition but in the perspective of the facts of the particular market setting,--i.e., the setting of the market action--and the important historical and other circumstances and events in the industry and product markets. Now all of this may have been simple enough yesteryear under the conditions of petty trade in local markets backed up by inter-market organization and mechanism. But what about the world of the great diversified corporation, national and multi-national?

The large corporation or any business enterprise for that matter, should not be looked at or interpreted as a monolithic entity. The same observation applies also to government and public enterprises. Unfortunately, either because of overly effective public relations programs or of the publication only of combined earnings and balance sheet figures in annual reports, or because of the inherent human tendency to symbolize, great corporations are viewed as GM, and IBM and AT&T, IT&T, GE, and so on, and in terms of monumental headquarters buildings and a small number of top executives and directors with large emoluments and the perquisites and trappings of high office.

We may recall historically that ordinary human beings when put on thrones with crowns and sceptres and housed in palaces become endowed with divine rights! In terms of our National Bicentennial we should recall, too, the sharp conflict between those who wished to place the regalia of royalty upon George Washington. And this effort might have succeeded except for the strong opposition of one insistent commoner who spoke in the name of "republicanism" not of democracy![13]

The top management of great corporations and of the large governmental agencies nowadays complain about the misinterpretations and lack of understanding of the workings and performance of their enterprises. The corporate managers are particularly concerned about our economic illiteracy concerning the workings and results of the system of competitive enterprise. It would seem reasonable, therefore to emphasize and demonstrate the workings of both public and private bureaucracies at the grass roots level of the individual citizen and customer and supplier.

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[13] See The Journal of William Maclay (with Introduction by Charles A. Beard). (New York: Albert and Charles Boni, 1927).

So far as the private corporation is concerned in its competitive marketing policies and programs, this could be done in part through market structure analysis, product by product, division by division, market by market. Yet, unfortunately, such market structure analysis increasingly is criticized because it allegedly represents an attack upon great corporations and upon size and concentration as such. It is alleged to be an instrument for the deconcentration of American industry. This position is based to some degree upon the large number of research studies and polemical literature relating to both economic (aggregate), industry and market concentration in this country.

To some extent, there has been an overemphasis and simplistic use of concentration measures and of their significance. Some analysts, even, feel that public policy decisions could be made almost mechanically in terms of concentration indices of which there are now a considerable variety.

This whole area of analysis has attracted the attention and interests of some very able researchers. In reaction, recently a sizeable research and polemical literature in defense of industry concentration is arising. The more ardent members in both groups, insofar as they can be categorized, join hands as vigorous proponents of competition. One the one hand, deconcentration is urged in order to restore and enhance the compulsions and discipline of the market and to reduce "market power". On the other hand, the large corporation in oligopolistic competition in our complex industrial society is praised because it "tends to achieve the competitive prices and rates of profit that the old classical model of 'atomistic' competition was supposed to achieve."[14] The "Industrial Reorganization

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[14]Neil H. Jacoby, "Antitrust or Pro-Competition?" California Management Review, Summer 1974, Vol. XVI, No. 4, p. 56. Dean Jacoby takes a very strong pro-competition stand including a recommendation for the creation of an Office of Competition within the Executive Office of the President or an independent Competition Commission.

Act" introduced by Senator Philip A. Hart is serving as a catalytic agent in focusing the polemics as between the deconcentration-market power group and those who defend concentration and enterprises in oligopolistic competition.[15]

In any event, the polemics clearly support the learning processes under way in strategic court cases. Hopefully, we shall have the time for these processes to continue, including the improving and interpreting of data illuminating the ways in which competition works locally, regionally, nationally and world-wide.

Now this is not nearly as horrendous as it sounds. Large corporations for internal organizational planning and control purposes usually do prepare such decentralized data and use them both in planning and in operations. Hundreds of American firms patronize services that give them a running record of market share positions by brands and by geographical territories. There tend also to be product and brand managers and territorial divisions and breakdowns. Always, there is knowledge of and awareness of actual and potential competition. Almost all business enterprises are doing market structure analysis, formally or informally, for their own planning and control purposes, without calling it such.

Undoubtedly, however, the market structure analysis as used in antitrust enforcement, coupled more recently with the requests by the S.E.C. and F.T.C. for product line or lines of business reporting, has served for the time being to bring the governmental agencies and business into even sharper adversary positions. Is this necessary or desirable? To the contrary, this whole issue

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[15] For the pros and cons, see Lee E. Preston, "Is It Timely for Industrial Reorganization?" California Management Review, Summer 1974, Vol. XVI, No. 4, pp. 68-80. For a collection of essays defending concentration and critical of some widely accepted economic literature, especially the theory of monopolistic competition of Edward H. Chamberlin, see Yale Brozen, The Competitive Economy, Vol. I (General Learning, 1974) and the forthcoming Vol. II.

could become a means for resolving differences and for establishing better working relationships. This is an area in which a dialogue between business and government could be exceedingly useful to all parties. For one thing the matter of the character and applicability of data that should be provided should be resolved.[16] This will require a large amount of serious, intelligent effort on the part of qualified experts. For another, it should be possible for business to indicate whether and how its interests would be served or harmed by the provision of such data.

It would appear that such data should not be injurious,--in fact to the contrary, unless the deep pocket, cross-subsidization, reciprocity and artificial transfer prices are important in internal planning and management. I have long held that these practices tend to be overemphasized by the critics of business. If I am right, then, in the main, there is nothing to lose by preparing such data and by disclosure.

It could be enormously heartening to local and regional competitors to be assured that their national competitors are not subsidizing their local dealers or other outlets through unfair methods derived out of size and diversity alone. Very likely punitive local treble damage actions might be forestalled. Furthermore, time and again, internal organization and planning and controls might be improved, especially if there is the awareness of the possible necessity of explaining the policies and practices in local markets as acceptably pro-competitive. But most important of all, in terms of our competition policy, much of the mystery would be

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[16] Cf. the analysis and suggestions of Betty Bock, in Line of Business Reporting: Problems in the Formulation of a Data Program (The Conference Board, November 1974).

taken out of corporate operations including the suspicions and misconceptions arising out of the monolithic image.

Along these lines business and government might learn to work together in support of a realistic and acceptable competition policy, understood and supported at the grass roots levels of consumer and dealer buyers and in the purchase of supplies and equipment. A basic tenet of our competition policy should be the maintenance of the opportunities for choices among independent alternatives at all levels, except when substantial economies of scale or better quality service would be sacrificed. Such choice should be available also as between public and private services whenever feasible.

A CAVEAT WITH RESPECT TO ENTERPRISE DIFFERENTIATION

Just as product differentiation can be real or fancied, so with enterprise differentiation. Basic enterprise differentiation is supported solidly in innovative product development and differentiation, and services and methods of operation, and/or in the planned, managed and coordinated diversification of products, functions and market levels. The public imagery and symbolism of such enterprises might appear to be the same as for, say, pure investment conglomerates, but the footing and hence the meaning would be quite different. Basic enterprise differentiation could become the source for some amount of patronage sometimes characterized as "monopoly thrust upon the firm".

Investment conglomerates are readily subject to market structure analysis,--unit by unit, division by division. But the units under planned and coordinated diversification intended to optimize the benefits of mutual reinforcement (synergy) might not lend themselves to simple, clear structural analysis. Even so, one should always begin in this way on a flexible basis, if for no other reason than to

highlight the problem areas for further analysis. Too little is known as yet about all of this in the manufacturing industries. Certainly, in some cases, the presence of combinatorial benefits and of systemic processes with high joint costs, make simple discrete analysis difficult or even meaningless. It would seem likely, however, that eventually relatively similar types of enterprises would appear in competition and these would, at least, to begin with, be the units for market structure analysis. This occurred in the traditional wholesale and retail trades in which assortments were influenced by the interdependencies of demands. Enterprises with similar assortments became recognizable competitors, often under oligopolistic competition. More recently, the developments in the supermarket area have followed the same course,--but with variations.

As yet, we have too little solid evidence concerning the nature and benefits of planned synergy in American manufacturing industries. Unfortunately, the stock market experience with the conglomerates which allegedly possessed this mysterious alchemy has cast a shadow over this type of conceptualization, except in some of the trade press. It is alleged that some Japanese enterprises are organized and managed along these lines. But, so far, no research evidence has appeared. In any event, the conjoined learning processes in adversary procedures and in discussions of segmented and product line reporting, may be expected to illuminate this area.

A FINAL OBSERVATION

In conclusion, I quote from Marketing and Public Policy:

"It should be feasible, however, in an educated, literate democracy to work out and maintain the appropriate relations and balance between the political forces,--law and regulation--and the inherent forces of the 'rule of competition'. Unless such a balance can be maintained, then the society must be prepared step by step to sacrifice the basic values and efficiencies associated with genuine freedom of choice by consumers and freedom of enterprise in production and marketing...the maintenance of an appropriate balance in a society with a firm commitment to the preservation of a private enterprise base should be much simpler than the achievement and maintenance of micro-balance in a command 'society'."[17]

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[17] Op. cit., p. 102; see also Gregory Grossman, "Notes for a Theory of the Command Economy," Soviet Studies, Vol. XV, No. 2, October 1963.